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No. 94-66 and No. 94-82

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MIKE MOORE, *et al.*,

Appellants,

vs.

JOHNNY DUPREE, *et al.*,

Appellees.

THE LAMAR COUNTY BOARD OF EDUCATION AND TRUSTEES, *et al.*,

Appellants,

vs.

JOHNNY DUPREE, *et al.*,

Appellees.

On Appeal From
The United States District Court
For The Southern District Of Mississippi

SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO AFFIRM

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SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO AFFIRM

I. Introduction

The purpose of this supplemental brief is to bring to the Court's attention the role of the United States in this case. The United States' consistent position throughout this litigation has been that the State of Mississippi did not comply with § 5 of the Voting Rights Act when it failed to identify with specificity the voting change in issue in a submission of other voting changes in 1986. The Solicitor General reaffirmed this position in his February 1992 brief as amicus curiae during the initial appeal of this case to the Court. Therefore, Appellees respectfully suggest that it is unnecessary for the Court to invite the Solicitor General to express the views of the United States on this case.

The suggestion to dispense with an invitation to the Solicitor General is not made out of fear that the United States' position has changed since 1992. Rather, it is based on our belief that, because of the nature of the issue presented, the United States' position has not changed and a reiteration of that position will not significantly aid the Court's decision-making process. The central issue on appeal concerns administrative preclearance under § 5. The District Court held that the State's 1986 submission failed to satisfy the standards outlined in Clark vs. Roemer, 500 U.S. 546 (1991), and earlier cases. These standards require that a jurisdiction identify with specificity each voting change for which its seeks administrative preclearance. In his 1992 brief, the Solicitor General stated that Clark removed any doubt that the State's 1986 submission failed to comply with § 5.

This litigation, which is entering its fifth year, applies not just to the operation of the three school districts that are

parties but also to every city and county school district in Mississippi affected by any municipal annexation. In light of the importance of this case to Mississippi public school districts and because the position of the United States has already been expressed, we respectfully suggest that the District Court's decision be summarily affirmed without inviting the Solicitor General to express again the views of the United States on this case.

II. The United States has Consistently Maintained that the State of Mississippi Failed to Submit Properly the Repealer of § 37-7-611 in 1986.

In March 1991, one year after the Appellees filed this action, the United States moved to participate as amicus curiae in support of the Appellees' position. J.S. App. 47a n.2. The United States argued that the State failed to receive preclearance of the repealer of § 37-7-611. Id. In Dupree I, the District Court rejected the position of the Appellees and the United States. J.S. App. 45a.

On appeal, the Solicitor General urged that the District Court's decision in Dupree I be vacated in light of the Court's intervening decision in Clark vs. Roemer. Brief for United States as Amicus Curiae at 13, Dupree vs. Moore, 117 L. Ed. 2d 609 (1992) (No. 90-1977). In addition, the Solicitor General stated that the principles in Clark "lead ineluctably to the conclusion that the [repealer of § 37-7-611] was not precleared when the Attorney General precleared the 'voting changes...as identified in' the State's 1986 letter." United States' Brief at 12-13; see also id. at 16 ("In short, the State's 1986 submission, when measured against the standards set out by this Court in Clark, did not include the repeal of Section 37-7-611."). After noting that the factors upon which the

District Court relied in Dupree I "are essentially irrelevant, as measured by Clark," Brief of United States at 17, the Solicitor General concluded: "Insofar as this Court's opinion in McCain [vs. Lybrand, 465 U.S. 236 (1984),] left any doubt that the premise of the district court's decision [in Dupree I] was incorrect, that doubt was removed by Clark." United States' Brief at 18-19.

The Court vacated Dupree I and remanded for further consideration in light of Clark. On remand, the United States, as amicus curiae, argued that Clark compelled a different outcome in the District Court. In Dupree II, the District Court ruled in favor of the Appellees and the position advanced by the United States. J.S. 3a.

The issues on appeal are not the subject of a conflict among the circuits and do not present a novel or controversial application of the Voting Rights Act. Instead, this appeal is squarely controlled by the Court's 1991 decision in Clark vs. Roemer. The United States has consistently maintained during this case that the State failed to comply with the standards set out in Clark.

III. Conclusion

For the foregoing reasons, the Appellees respectfully request that the Court summarily affirm the District Court's decision without inviting the Solicitor General to express the views of the United States.

RESPECTFULLY SUBMITTED,

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